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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-204449

DATE: NOV 18 1981

MATTER OF: Agency for International Development—Appropriation
for Human Reproduction Research Program

- DIGEST: 1. Agency for International Development was authorized to award \$3 million grant to World Health Organization's Special Program for Research, Development and Research Training in Human Reproduction during fiscal year 1981. Language in fiscal year 1981 continuing resolution that foreign assistance activities should be funded in accordance with associated agreements in joint explanatory statement of conference committee for appropriation bill did not incorporate entire explanatory statement into resolution. Associated agreements, which were incorporated into resolution, did not deal with Special Program. Therefore, earmarking of funds for Program contained in authorizing legislation was not impliedly repealed by continuing resolution.
2. Agency for International Development was authorized to award \$3 million grant to World Health Organization's Special Program for Research, Development and Research Training in Human Reproduction during fiscal year 1981. Committee intent that Program not be funded, contained in joint explanatory statement of conference committee but not expressed or incorporated by reference in legislation itself, is not binding on AID.

The Agency for International Development (AID) has requested our opinion on whether it had the authority to award a \$3 million aid grant to the World Health Organization's Special Program for Research, Development and Research Training in Human Reproduction (Program) in fiscal year 1981. Although AID did make the award before the end of fiscal year 1981, the grant agreement is so worded that the grant may be withdrawn should we determine that it was unauthorized. However, in our opinion, AID did have authority to award the questioned grant.

Accompanying the AID submission were an internal legal memorandum concluding that AID did have the authority to make the grant in fiscal year 1981, and letters from the Chairman and the Majority Counsel of the Foreign Operations Subcommittee of the Senate Appropriations Committee arguing that the fiscal year 1981 continuing resolution precluded AID from making the grant. We have also received a communication from the Population Action Council asking us to decide that the questioned grant is unauthorized.

Section 302(b)(1) of the International Security and Development Cooperation Act of 1980, Pub. L. No. 96-533, 94 Stat. 3145, authorized the appropriation of \$238 million for population planning assistance for fiscal year 1981, " * * of which not less than \$3,000,000 shall be available only to support the World Health Organization's Special Program of Research, Development and Research Training in Human Reproduction * * *." However, determining whether or not the Congress provided funding for this Program in fiscal year 1981 requires consideration of, in turn, an enacted continuing appropriations resolution, an unenacted resolution, an unpassed appropriation bill for fiscal year 1981, and the conference committee report and joint explanatory statement accompanying the report on the fiscal year 1980 unenacted appropriation act.

Fiscal year 1981 funding for foreign assistance programs is contained in the Joint Resolution making continuing appropriations for the fiscal year 1981, Pub. L. No. 96-536, 94 Stat. 3166 (as extended by Pub. L. No. 97-12, 95 Stat. 14). Section 101(b) of the Continuing Resolution appropriates " * * * such amounts as are necessary to carry out the rates and terms agreed to in the Conference Report 96-1536 as reported and agreed to December 13, 1980, for section 101(b) of H.J. Res. 637."

Section 101(b) of H.J. Res. 637, as incorporated by the conference report 96-1536, states that the following sums are appropriated:

" * * * such amounts as may be necessary for continuing projects or activities which were conducted in fiscal year 1980 and would be provided for in H.R. 7854, the Foreign Assistance and Related Programs Appropriation Act, 1981, as reported July 29, 1980, at a rate of operations not in excess of the rate which would have been provided under the terms of the conference report (House Report 96-787), and in accordance with associated agreements stated in the Joint Explanatory Statements of the Committee of Conference, accompanying H.R. 4473, * * *."

Thus, the quoted language, from a resolution which was never enacted, was incorporated by reference in Pub. L. No. 96-536, the fiscal year 1981 continuing resolution providing appropriations to AID. As a result, Pub. L. No. 96-536 provides funds for "projects or activities" which 1) were conducted in fiscal year 1980, and 2) were provided for in H.R. 7854 as reported to the House on July 29, 1980.

In the past, we have taken the position that the term "projects or activities", as used in continuing resolutions, does not refer to specific line items contained in an Administration's budget submission or in committee reports. Rather, the term refers to the appropriation as enacted for the previous fiscal year. See B-162447 March 8, 1971. Thus, if a program was funded as part of a lump-sum appropriation in the previous fiscal year, it is the lump-sum appropriation, not the individual program, which is the "project or activity."

Under the authorizing legislation, funding for the Program was to be included within the appropriation for "Population, Development Assistance." Funds for this lump-sum appropriation were provided in fiscal year 1980 and would have been provided in H.R. 7854. Therefore, funds for this "project or activity" were available under the continuing resolution.

The amount of the appropriation, that is the "rate of operations," is the amount which would have been provided under the terms of the conference report on H.R. 4473, 96th Congress, " * * * and in accordance with associated agreements stated in the Joint Explanatory Statement of the Committee of Conference * * *." H.R. Rept. No. 96-787, 96th Congress, 2d Sess., contains both the referenced conference report and the joint explanatory statement.

The disagreement between the House of Representatives and the Senate concerning the Population, Development Assistance appropriation was over Senate amendment number 18 to the House-passed bill. With respect to this amendment, the conference report states:

"That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment, as follows:

"In lieu of the sum proposed by said amendment insert \$190,000,000; and the Senate agree to the same." H.R. Rept. No. 96-787, supra, at 2.

The joint explanatory statement indicates again that the conference committee has agreed to an appropriation of \$190 million, and then adds:

"The general reduction of \$26,321,000 from the budget request for Population includes specific reductions as indicated for the following projects:

Project Name	Project No.	Amount of Reduction
* * *	*	*
World Health Organization Special Program on Human Reproduction	932-0662	2,000,000"

H.R. Rept. No. 96-787, supra, at 9.

In letters to AID from the Chairman and the Majority Counsel of the Foreign Operations Subcommittee of the Senate Appropriations Committee, which were included with the AID submission, the view is expressed that by referring to "associated agreements" the continuing resolution is incorporating into the law by reference the reduction by program subdivision specified by the conference committee in the joint explanatory statement. Since the budget request for the Program for fiscal year 1980 was only \$2 million, the letters argue that the language in the joint explanatory statement indicating an intent to reduce the request by the full \$2 million was incorporated into the continuing resolution, thus specifically reducing the appropriation for the Program to zero and superseding the earmark in the authorization legislation. To determine the merit of this view we must determine what the Congress intended when it used the phrase "associated agreements" in the continuing resolution.

As we have already indicated, the resolution appropriates for foreign assistance projects or activities the amounts which would have been provided by the conference report and "in accordance with associated agreements" in the joint explanatory statement. The conference report (the first four pages of H.R. Rept. No. 96-787) indicates the specific agreements that the committee of conference has made on the differing language of the House and the Senate. Specifically, with respect to various appropriations, the report indicates the amounts which the committee has agreed upon.

However, the conference report does not indicate an agreed amount for every appropriation which the Senate and House differed on. Rather, it concludes that:

"The committee of conference report in disagreement amendments numbered 3, 5, 11, 27, 28, 32, 33, 39, 40, 52, 55, 66, 70, 71, and 75." H.R. Rept. No. 96-787, supra, at 4.

With respect to these amendments, the agreements of the conference committee as to further action or amounts to be recommended to the respective Houses of Congress are contained only in the joint explanatory statement (the remaining 16 pages of H.R. Rept. No. 96-787). It is these agreements, rather than other material in the statement, which in our view are the "associated agreements" incorporated into the continuing resolution. Thus, for example, with respect to Senate amendment 5, the explanatory statement reads:

"Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

"In lieu of the sum proposed by said amendment, insert the following: \$272,000,000

"The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate. * * *

H.R. Rept. No. 96-787, supra, at 5-6.

The other amendments in "technical" disagreement are treated similarly.

While the amendments in the conference report which were reported as "in disagreement" do not indicate an agreed-upon appropriation amount in the report, the action proposed by the Conference Committee, including recommended amounts, is spelled out in the joint explanatory statement. Thus, had the Congress referred only to the conference report in the continuing resolution, there would be no specified amounts appropriated for the amendments which the conference committee reported in technical disagreement. Therefore, it was necessary for the Congress to refer also to the joint explanatory statement in order to specify those amounts as appropriated by the continuing resolution. However, it was not necessary to refer to the statement for those amounts listed in the conference report as agreed upon by the managers of the House and Senate.

Based on the above, we conclude that the "associated agreements" referred to in the continuing resolution are the agreements by the managers of the House and the Senate to introduce motions in their respective houses to implement the agreements reflected in the joint explanatory statement listed by the conference report as in disagreement. We cannot agree with the Chairman and Counsel of the Subcommittee that by using the phrase "in accordance with associated agreements" the Congress intended to incorporate the entire joint explanatory statement into the continuing resolution. Because the conferees agreed on the appropriation for "Population, Development Assistance" in the conference report, there was no "associated agreement" with respect to this appropriation incorporated into the continuing resolution.

Because the reduction of the appropriation for the Program to zero was not specifically incorporated into the continuing resolution, we conclude that the intent of the conference committee not to fund the Program is therefore not binding on AID. In this regard, we have repeatedly held that subdivisions of an appropriation contained in a committee report are not legally binding upon the department or agency concerned unless they are specified in the appropriation act itself. See e.g., LTV Aerospace Corporation, 55 Comp. Gen. 307 (1975). Accordingly, because the conference committee's intent not to fund the Program was not contained in the language of the continuing resolution itself, AID was not precluded from making the grant using the appropriation "Population, Development Assistance" and was correct in concluding that the earmarking of funds for the Program contained in the authorizing legislation was not impliedly repealed by the continuing resolution.

MILTON J. SOCOLAR
For: Comptroller General
of the United States